

### **REMARKS**

Claims 5 and 15 have been canceled, Claims 1, 10-11 and 20 have been amended, and Claims 48-85 have been added. Claims 1-4, 6-14 and 16-85 are pending in the application. An enclosed Amendment Transmittal calculates an additional filing fee that is necessitated by the claim amendments above, and a check is enclosed to cover this additional filing fee. In view of the foregoing amendments, and the remarks that follow, Applicants respectfully request reconsideration.

#### **Information Disclosure Statement**

Pursuant to the duty of disclosure, Applicants are enclosing a fourth Information Disclosure Statement (IDS), in order to cite some related applications and some other documents. It is assumed that this Amendment and the enclosed IDS will both become available to the Examiner at the same time. However, in the event that this Amendment becomes available before the IDS, this paragraph will make the Examiner aware that the IDS has been filed and should be considered.

#### **Allowed Claims**

Noted with appreciation is the indication in the Office Action that Claims 21-37 have been allowed.

#### **Comment on Statement of Reason for Allowance**

In lines 1-4 on page 7 of the Office Action, the Examiner sets forth a reason why Claims 21-37 are considered to recite patentable subject matter. Applicants agree that Claims 21-37 are allowable. However, Applicants do not agree in all respects with the stated reason. For example, Applicants believe that the stated reason should not be interpreted to mean that it is the only reason supporting the allowability of the claims, and that there are no other

reasons that separately and independently support the allowability of the independent claims and/or the dependent claims.

Independent Claim 38

Independent Claim 38 stands rejected under 35 U.S.C. §102 as anticipated by Breed U.S. Patent No. 6,919,803. This ground of rejection is respectfully traversed, for the following reasons. The PTO specifies in MPEP §2131 that, in order for a reference to anticipate a claim under §102, the reference must teach each and every element recited in the claim. Claim 38 of the present application recites:

A method comprising:  
monitoring whether a door of a container is in a closed  
position; and  
emitting a wireless signal indicating whether said container  
door is in said closed position.

The Office Action notes that Breed uses a door status sensor 24 to monitor whether the doors of a container are open or closed. The Office Action then asserts that ultrasonic transmitters 14 and 14' emit ultrasonic waves only if the sensor 24 indicates the doors are closed. However, Breed expressly teaches that the transmitters 14 and 14' can emit ultrasonic waves not only when the doors are closed, but also when the doors are open (for example "to monitor the movement of objects into or out of the container", as discussed at lines 46-49 in column 11 of Breed). Thus, the ultrasonic waves in Breed do not actually indicate whether the container doors are open or closed. Accordingly, Breed does not disclose each and every element recited in Claim 38, and therefore does not anticipate Claim 38 under §102. Claim 38 is therefore believed to be allowable over Breed, and notice to that effect is respectfully requested.

Dependent Claim 48

Claim 48 is a new claim that depends from Claim 38, and that includes a recitation of "emitting said wireless signal at a location external to said container". In contrast, the ultrasonic transmitters 14 and 14' of Breed emit wireless signals inside the container. Breed thus does not disclose each and every element recited in Claim 48, and therefore does not anticipate Claim 48 under §102. Accordingly, Claim 48 is believed to be allowable over Breed, and notice to that effect is respectfully requested.

Independent Claim 42

Independent Claim 42 stands rejected under 35 U.S.C. §102 as anticipated by the Breed patent. This ground of rejection is respectfully traversed, for the following reasons. As noted above, MPEP §2131 specifies that, in order for a reference to anticipate a claim under §102, the reference must teach each and every element recited in the claim. Claim 42 of the present application recites:

An apparatus comprising: . . .  
a first portion which monitors whether said door of said  
container is in said closed position; and  
a second portion which is cooperable with said first portion  
and which can emit a wireless signal indicating whether said  
container door is in said closed position.

The rationale given in the Office Action for the rejection of Claim 42 is the same basic rationale given for the rejection of Claim 38. For example, the Office Action asserts in lines 8-9 on page 4 that "the transmission of the waves themselves being the indication of closed doors, sense [sic] they are transmitted only when the doors are closed". However, as discussed above, Breed actually teaches that the transmitters 14 and 14' can emit ultrasonic waves not only when the

container doors are closed, but also when the doors are open (lines 46-49 in column 11). Therefore, and contrary to the assertions in the Office Action, the ultrasonic waves in Breed do not actually indicate whether the container doors are open or closed. Breed thus does not disclose each and every element recited in Claim 42, and therefore does not anticipate Claim 42 under §102. Accordingly, Claim 42 is believed to be allowable over Breed, and notice to that effect is respectfully requested.

Dependent Claim 49

Claim 49 is a new claim that depends from Claim 42, and that includes a recitation that "said second portion emits said wireless signal at a location external to said container". In contrast, the ultrasonic transmitters 14 and 14' of Breed emit wireless signals inside the container. Breed thus does not disclose each and every element recited in Claim 49, and therefore does not anticipate Claim 49 under §102. Accordingly, Claim 49 is believed to be allowable over Breed, and notice to that effect is respectfully requested.

Independent Claim 1

The foregoing amendments add some limitations to Claim 1, including limitations that originally appeared in dependent Claim 5. Since Claim 1 now includes the limitations that previously appeared in Claim 5, the following discussion focuses on the ground of rejection that the Office Action applied to the subject matter of Claim 5. More specifically, the Office Action rejected the subject matter of Claim 5 under 35 U.S.C. §103 on the ground that it would be obvious in view of Finn U.S. Patent No. 6,512,455. However, it is respectfully submitted that amended Claim 1 is patentably distinct from Finn, for the following reasons. The PTO specifies in MPEP §2142 that:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not

produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

And in regard to what is needed to establish a *prima facie* case of obviousness under §103, MPEP §2142 specifies that:

To establish a *prima facie* case of obviousness . . . the prior art reference . . . must teach or suggest all the claim limitations.  
(Emphasis added).

The PTO considers this requirement to be important, as evidenced by the fact that this exact language appears not only in MPEP §2142, but also in other sections of the MPEP, including MPEP §706.02(j) and MPEP §2143. Applicants' amended Claim 1 includes a recitation of:

emitting a wireless signal within a container;  
detecting said wireless signal in the region of and externally  
of said container;  
monitoring said detected wireless signal for a change in a  
characteristic thereof caused by a circumstance other than a change  
in said wireless signal as transmitted; . . .

In contrast, Finn does not monitor the "detected wireless signal for a change in a characteristic thereof caused by a circumstance other than a change in said wireless signal as transmitted". Accordingly, Finn fails to satisfy the requirement of MPEP §2142 that Finn must "teach or suggest all the claim limitations" (emphasis added). It is therefore respectfully submitted that amended Claim 1 is not obvious under §103 in view of Finn, and notice to that effect is respectfully requested.

Independent Claim 11

The foregoing amendments add some limitations to Claim 11, including limitations that originally appeared in dependent Claim 15. Since Claim 11 now includes the limitations that previously appeared in Claim 15, the following discussion focuses on the ground of rejection that the Office Action applied to the subject matter of Claim 15. More specifically, the Office Action rejected the subject matter of Claim 15 under 35 U.S.C. §103 on the ground that it would be obvious in view of the Finn patent. However, it is respectfully submitted that amended Claim 11 is patentably distinct from Finn, for the following reasons. Applicants' amended Claim 11 recites:

a first transmitter which is supported on said container and  
emits a wireless signal within said container;

a receiver which is supported on said container externally  
thereof, which detects said wireless signal, and which monitors  
said detected wireless signal for a change in a characteristic thereof  
caused by a circumstance other than a change in said wireless  
signal as transmitted;

The rationale given in the Office Action for the rejection of the subject matter that appeared in Claim 15 is the same rationale given for the rejection of the subject matter that appeared in Claim 5. Accordingly, for the same basic reasons discussed above in association with Claim 1, it is respectfully submitted that amended Claim 11 is distinct from Finn. More specifically, Finn's receiver does not monitor the "detected wireless signal for a change in a characteristic thereof caused by a circumstance other than a change in said wireless signal as transmitted". Accordingly, Finn fails to satisfy the requirement of MPEP §2142 that Finn must "teach or suggest all the claim limitations" (emphasis added). Accordingly, it is respectfully submitted that

amended Claim 11 is not obvious under §103 in view of Finn, and notice to that effect is respectfully requested.

Independent Claim 50

Independent Claim 50 is a new independent claim, and includes a recitation of:

emitting a wireless signal within a container;  
detecting said wireless signal at each of spaced first and  
second locations in the region of said container;  
monitoring said detected wireless signal for a change in a  
characteristic thereof, said characteristic being a phase difference  
between said wireless signal as detected at said first location and  
said wireless signal as detected at said second location; . . .

Claim 50 is similar (but not identical) to original Claim 9. The Office Action rejected the subject matter of Claim 9 under 35 U.S.C. §103 as obvious in view of the Finn patent. In this regard, the Office Action indicates that:

. . . the examiner takes Official Notice that in the wireless communication art, means for detection of signal strength and phase difference for the purpose of monitoring [the] location of monitored objects is well known in the art, and therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate these means into the system of Finn since this would have helped ensure that the status of the objects would [be] properly monitored since the signal strength and

phase difference detection would have helped determine proper location of the objects in the container.

The Examiner's position is respectfully traversed, for several different reasons that are discussed separately below.

#### TRAVERSE OF ASSERTION OF OFFICIAL NOTICE

Applicants respectfully traverse the Examiner's assertion of official notice. In particular, detection of signal strength or phase difference is common in some other arts, but Applicants respectfully traverse the assertion that detection of signal strength or phase difference is well known or commonly used for the specific purpose of monitoring the location of objects.

Pursuant to MPEP §2144.03, Applicants respectfully request that the Examiner support the assertion with adequate evidence. As pointed out in MPEP §2144.03, official notice should only be taken in "rare" circumstances, and only where the facts asserted "are capable of instant and unquestionable demonstration as being well-known". In other words, the Examiner must be in a position to quickly and easily document the asserted facts, and Applicants therefore respectfully request that the Examiner do so here.

#### IMPROPER USE OF OFFICIAL NOTICE

In regard to establishing obviousness under §103, MPEP §2142 explains that an examiner must meet each of three distinctly different requirements, as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a



reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

Applying this to the present situation, the three requirements are that (1) there must be a rationale for motivation to modify Finn, (2) there must be a reasonable expectation that the modification will be successful, and (3) Finn must teach or suggest all of the claim limitations. In the present Office Action, the Examiner relies on official notice in an attempt meet the third of these requirements, or in other words to demonstrate that all of the claim limitations are known. In particular, the Office Action recognizes that Finn does not teach or suggest detection of signal strength or phase difference, and so the Office Action attempts to cure this defect by using official notice to assert that detection of signal strength or phase difference is known in the relevant art. However, the MPEP does not authorize the use of official notice for the purpose of satisfying the third requirement. Instead, the MPEP authorizes the use of official notice for the specific purpose of satisfying the first requirement (i.e. showing a rationale for motivation to modify or combine references). More specifically, MPEP §§2144 through 2144.04 are related sections that all discuss how an examiner can establish what §2144 refers to as "the rationale to modify or combine the prior art", or in other words motivation to modify or combine. Of these, MPEP §2144.03 deals with official notice. MPEP §2144.03 indicates that, in rare circumstances, an examiner can rely on official notice, but only to establish motivation to combine, and only after having already demonstrated that the prior art references disclose all of the claim limitations (in order to separately and properly meet the third requirement).

Consequently, the Examiner is using official notice here in a manner that is not authorized by the MPEP. Therefore, the Office Action has not met each of the three requirements set forth in MPEP §2142, and thus has failed to properly establish a prima facie

case of obviousness with respect to subject matter recited in Claim 50. Accordingly, for this reason alone, it is respectfully submitted that Claim 50 is allowable over Finn, and notice to that effect is respectfully requested.

#### FINN FAILS TO TEACH ALL CLAIM LIMITATIONS

As noted above, MPEP §2142 specifies with respect to §103 that:

To establish a *prima facie* case of obviousness . . . the prior art reference (or references when combined) must teach or suggest all the claim limitations. (Emphasis added).

As discussed above, the present rejection is based on Finn, but the Office Action recognizes that Finn does not disclose all of the limitations of Claim 50. Therefore, the Office Action attempts to make an improper use of official notice in order to meet the limitations in Claim 50 that are not taught or suggested by Finn. But since Finn is the only reference underlying the §103 rejection, and since the Office Action itself recognizes that Finn does not disclose all of the limitations of Claim 50, the Office Action fails to meet all of the requirements set forth in MPEP §2142, and thus fails to properly establish a *prima facie* case of obviousness under §103. Accordingly, for this reason alone, it is respectfully submitted that Claim 50 is allowable over Finn, and notice to that effect is respectfully requested.

#### THE RELEVANT LIMITATION IS DIFFERENT FROM THE POINT OF OFFICIAL NOTICE

In attempting to take official notice, the basic assertion made in the Office Action is merely that it is known to monitor a single received signal for a change in phase or signal strength. However, what Claim 50 recites is different. In particular, what Claim 50 recites is "detecting said wireless signal at each of spaced first and second locations", and then looking for a change in the "phase difference between said wireless signal as detected at said first location

and said wireless signal as detected at said second location". Comparing two received signals to look for changes in the phase difference between them is something different from the point as to which the Examiner has attempted to take official notice. Accordingly, even if there were not serious problems with the manner in which official notice has been used, the proposed modification to Finn would still not result in the subject matter that is recited in Claim 50. Accordingly, for this reason alone, it is respectfully submitted that Claim 50 is not obvious under §103 in view of Finn.

For all of the mutually exclusive reasons discussed above, it is respectfully submitted that the subject matter of Claim 50 is not rendered obvious under §103 by the Finn patent. Claim 50 is thus believed to be allowable, and notice to that effect is respectfully requested.

#### Independent Claim 58

Independent Claim 58 is a new independent claim, and includes a recitation of:

a first transmitter which is supported on said container and  
emits a wireless signal within said container;

a receiver having first and second portions that are  
respectively supported on said container at spaced first and second  
locations and that respectively detect said wireless signal at said  
first and second locations, said receiver monitoring said detected  
wireless signal for a change in a characteristic thereof, said  
characteristic being a phase difference between said wireless signal  
as detected at said first location and said wireless signal as detected  
at said second location; . . .

Claim 58 is similar (but not identical) to original Claim 19. The Office Action rejected the subject matter of Claim 19 under 35 U.S.C. §103 as obvious in view of the Finn patent. The rationale given in the Office Action for the rejection of Claim 19 is the same rationale given for the rejection of Claim 9. Therefore, for the same basic reasons discussed above in association with Claim 50, it is respectfully submitted that Claim 58 is not rendered obvious under §103 by the Finn patent. Claim 58 is therefore believed to be allowable, and notice to that effect is respectfully requested.

Independent Claim 66

Independent Claim 66 is a new independent claim, and includes a recitation of:

emitting a wireless signal within a container, said wireless  
signal containing a unique identification code; . . .

monitoring said detected wireless signal for a change in a  
characteristic thereof, said monitoring being carried out using only  
detected wireless signals that include said unique identification  
code; . . .

Claim 66 is similar (but not identical) to original Claim 10. The Office Action rejects the subject matter of Claim 10 under 35 U.S.C. §102 as anticipated by the Finn patent. In this regard, the Office Action first notes that Finn discloses transmitters (e.g. 1010 and 1132) that can transmit wireless signals. Next, the Office Action notes that lines 12-13 of column 14 in Finn mention an "asset ID capture device 1045". The Office Action then goes on to assert that the asset ID is a unique code that the transmitters can incorporate into their wireless signals. However, there are several problems with this assertion.

First, the indicated reference in column 14 to the "asset ID capture device 1045" is the only place that Finn's specification mentions this device 1045. Finn never explains exactly what

this device does, or exactly what the asset ID is. As best understood, the truck shown in Figure 11 of Finn would typically be carrying a plurality of assets of the same type, such as a plurality of identical televisions that all necessarily have exactly the same asset ID. Consequently, under the Examiner's interpretation, each television would have an associated transmitter that was transmitting a wireless signal containing this television asset ID. In other words, there would be a plurality of transmitters all transmitting wireless signals that include exactly the same asset ID. Thus, the asset ID would not amount to a unique identification code in the wireless signals from any given transmitter, because several other transmitters would be separately transmitting wireless signals that contain exactly the same asset ID.

A second problem with the Office Action's approach can be seen in Figure 10 of Finn. Figure 10 shows the asset ID capture device 1045, and also shows several transmitters 1010 that are each associated with a respective one of several assets 1020. The Office Action asserts that each transmitter 1010 can include an asset ID capture device 1045, but Figure 10 shows that the asset ID capture device 1045 is not actually a part of any of the transmitters 1010. In addition, it should be noted that there is an arrow from a transmitter 1010 to the asset ID capture device 1045, but no arrow from the asset ID capture device 1045 to any transmitter 1010. Therefore, even assuming that the asset ID capture device 1045 could somehow obtain an asset ID for one of the assets 1020, the asset ID capture device 1045 would have no way to get the asset ID to a transmitter 1010. Thus, the transmitters 1010 cannot include the asset ID in their transmitted signals, because they apparently have no way of getting the asset ID from the device 1045.

Thus, Finn does not disclose each and every element recited in Claim 66, and therefore does not anticipate Claim 66 under §102. Accordingly, Claim 66 is believed to be allowable over Finn, and notice to that effect is respectfully requested.

#### Independent Claim 76

Independent Claim 76 is a new independent claim, and includes a recitation of:

a first transmitter which is supported on said container and emits a wireless signal within said container, said wireless signal containing a unique identification code;

a receiver which is supported on said container, which detects said wireless signal, and which monitors said detected wireless signal for a change in a characteristic thereof, said monitoring being carried out using only detected wireless signals that include said unique identification code; . . .

Claim 76 is similar (but not identical) to original Claim 20. The Office Action rejected the subject matter of Claim 20 under 35 U.S.C. §102 as anticipated by the Finn patent. The rationale given in the Office Action for the rejection of Claim 20 is the same rationale given for the rejection of Claim 10. Therefore, for the same basic reasons discussed above in association with Claim 66, it is respectfully submitted that Finn does not disclose each and every element recited in Claim 76, and therefore does not anticipate Claim 76 under §102. Claim 76 is therefore believed to be allowable over Finn, and notice to that effect is respectfully requested.

#### Dependent Claims

Claims 2-4 and 6-10, Claims 12-14 and 16-20, Claims 39-41, Claims 43-47, Claims 51-57, Claims 59-65, Claims 67-75 and Claims 77-85 respectively depend from Claim 1, Claim 11, Claim 38, Claim 42, Claim 50, Claim 58, Claim 66 and Claim 76, and are also believed to be distinct from the art of record, for example for the same reasons discussed above with respect to Claims 1, 11, 38, 42, 50, 58, 66 and 76, respectively.

#### Conclusion

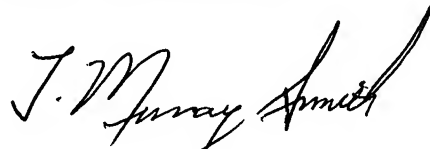
Based on the foregoing, it is respectfully submitted that all of the pending claims are fully allowable, and favorable reconsideration of this application is therefore respectfully requested. If

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the Examiner believes that examination of the present application may be advanced in any way by a telephone conference, the Examiner is invited to telephone the undersigned attorney at 972-739-8647.

Respectfully submitted,



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